IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1204 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SAMIMBEN USMAN GANIBHAI FATANI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR HARSHIT S TOLIA for Applicant(s) : 1,
MRS MANISHA LAVKUMAR A.P.P. for Respondent(s) : 1,
MR MM TIRMIZI for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/07/2006

ORAL JUDGMENT

1. Rule. Mrs. Manisha Lavkumar learned A.P.P., waives service of rule on behalf of the opponent State and learned advocate Mr. Tirmizi waives service of rule

on behalf of opponent no. 2. This application has been filed by the original complainant.

2. Initially Mr. Tirmizi learned advocate for opponent no. 2 raised the contention with regard to maintainability of the application under Section 397 read with 401 of the Criminal Procedure Code, but subsequently, he has given it up. In view of the same now the impugned order is examined and this decision is given on merits of the said order.

3. The impugned order has been passed by the learned Additional Sessions Judge and Presiding Officer, Sessions Court, Bhavnagar, on 19th January, 2006, below Exh. 1 in Criminal Misc. Application No. 52 of 2006. The said application was filed under Section 439 of the Criminal Procedure Code by opponent no. 2 who is the original accused of F.I.R., registered at C.R. No. I-8 of 2006 with “C” Division Police Station, Bhavnagar, for offences punishable under Sections 395, 450, 506(2) etc., of the Indian Penal Code.

4. The ground of challenge is, as enumerated in the application, and as submitted by Mr. Tolia learned advocate for the applicant, that the learned Judge has

not assigned any reasons, why benefit under Section 439 of the Criminal Procedure Code is required to be granted to opponent no. 2, nor he has prescribed any conditions. In the submission of Mr. Tolia, this order is, therefore, illegal and is required to be quashed and set aside.

5. As against that Mr. Tirmizi learned advocate for opponent no. 2 has submitted that when the bail application has been granted, the bail cannot be cancelled for these reasons. Mrs. Manisha Lavkumar learned A.P.P., has however, assailed the order by advancing the same contentions as of Mr. Tolia.

6. In the decision rendered by the Apex Court in the case of **Anwari Begum v. Sher Mohammad reported in 2005 (7) S.C.C., pg.326**, it has been laid down by the Apex Court that the learned Judge while dealing with the bail application has not to be so cryptic, as to refrain from assigning reasons. Without reasons it is not known why the bail is granted or refused by the concerned Court. It is said that the discretion has to be exercised judiciously and the Court must indicate the reasons for granting bail. Any order *de hors* of such reasons suffers from non application of mind and hence, the same is required to be set aside. The impugned order shows that

neither brief facts nor reasons have been stated by the learned Judge. These elementary requirements have not been complied with by the learned Judge. The application seems to have been disposed of in utter haste. Such hasty approach towards deciding application under Section 439 of the Criminal Procedure Code is required to be deprecated and it is now expected that henceforth the learned Judge will refrain from adopting such approach.

7. In view of the said decision, this order is required to be quashed and set aside and it is hereby quashed and set aside. However, considering the facts and circumstances of the case, the Police shall not arrest opponent no. 2 for a period of 15 days from the date of this order. In the meanwhile, opponent no. 2 if he so choses can approach the concerned Court under Section 439 of the Criminal Procedure Code for obtaining fresh bail.

7. With the aforesaid directions, this application is allowed. Rule is made absolute.

[Akshay H. Mehta, J.]

/phalguni/